

Kagan Decl. Ex. 9

In the Matter Of:

Plavin vs

Group Health Incorporated

ALAN BERKOWITZ

July 21, 2022



Page 1	Page 3
<p>1 IN THE UNITED STATES DISTRICT COURT FOR THE</p> <p>2 MIDDLE DISTRICT OF PENNSYLVANIA</p> <p>3 STEVEN PLAVIN, GARY ALTMAN, :</p> <p>4 MICHELLE DAVIS-MATLOCK, and : DANIELLE THOMAS, on behalf of : themselves and all others : 5 similarly situated, : C.A. No. 3:17-cv-01462 : 6 Plaintiffs, : (Hon. Robert D. Mariani) : 7 vs. : : 8 GROUP HEALTH INCORPORATED, : : 9 Defendant. : 10 11 JULY 21, 2022 12 13 Video-recorded deposition of ALAN W. 14 BERKOWITZ, taken remotely, before Patricia R. 15 Frank, Registered Merit Reporter, Certified 16 Realtime Reporter, and Notary Public, commencing 17 at 10:06 a.m. EDT, on the above date. 18 19 20 21 22 23 24 25</p>	<p>1 I N D E X</p> <p>2</p> <p>3 Witness Page</p> <p>4 ALAN W. BERKOWITZ</p> <p>5 By Mr. Ferrone 8</p> <p>6</p> <p>7 E X H I B I T S</p> <p>8 (Exhibits attached to transcript in hard</p> <p>9 copy format and/or electronically.)</p> <p>10</p> <p>11 Marked for I.D. Page</p> <p>12 Exhibit 1 Notice of Subpoena to 22</p> <p>13 Mr. Berkowitz</p> <p>14 Exhibit 2 June 28, 2022 e-mail from 24</p> <p>15 Justin C. Ferrone to Nick</p> <p>16 Carullo and others containing</p> <p>17 search terms</p> <p>18</p> <p>19 Exhibit 3 E-mail chain 29</p> <p>20 BERKOWITZ_000000078-000000081</p> <p>21 Exhibit 4 E-mail chain 38</p> <p>22 BERKOWITZ_000000082-000000085</p> <p>23</p> <p>24 Exhibit 5 Complaint filed in the United 41</p> <p>25 States District Court for the</p> <p>26 Middle District of Pennsylvania</p> <p>27 Plavin, et al. v. GHI</p> <p>28 Exhibit 6 First Amended Class Action 46</p> <p>29 Complaint</p> <p>30</p> <p>31 Exhibit 7 E-mails 47</p> <p>32 BERKOWITZ_000000142</p> <p>33</p> <p>34 (Index cont'd. on next page)</p>
Page 2	Page 4
<p>1 A P P E A R A N C E S :</p> <p>2 (All parties appearing remotely)</p> <p>3</p> <p>4 ATTORNEYS FOR PLAINTIFFS AND THE WITNESS:</p> <p>5 SUSMAN GODFREY L.L.P.</p> <p>6 BY: NICHOLAS C. CARULLO, ESQUIRE</p> <p>7 1301 Avenue of the Americas</p> <p>8 32nd Floor</p> <p>9 New York, NY 10019</p> <p>10 212.729.2026</p> <p>11 ncarullo@susmangodfrey.com</p> <p>12</p> <p>13 ATTORNEYS FOR DEFENDANT:</p> <p>14 DEBEVOISE & PLIMPTON LLP</p> <p>15 BY: JUSTIN C. FERRONE, ESQUIRE</p> <p>16 JARED I. KAGAN, ESQUIRE</p> <p>17 919 Third Avenue</p> <p>18 New York, NY 10022</p> <p>19 212.909.6000</p> <p>20 jcferrone@debevoise.com</p> <p>21 jikagan@debevoise.com</p> <p>22</p> <p>23 ALSO PRESENT:</p> <p>24</p> <p>25 AYDALINE GARCIA, Videographer</p> <p>and Document Tech</p>	<p>1 (Index cont'd.)</p> <p>2 Marked for I.D. Page</p> <p>3 Exhibit 8 E-mails 56</p> <p>4 BERKOWITZ_000000143-000000144</p> <p>5</p> <p>6 Exhibit 9 April 16, 2019 e-mail from 60</p> <p>7 keystonecopl@verizon.net to</p> <p>8 keystonecopl@verizon.net</p> <p>9 PLAVIN_000004335-000004343</p> <p>10 Exhibit 10 March 25, 2020 e-mail from 71</p> <p>11 keystonecopl@verizon.net to</p> <p>12 Louis Hollander, Jr.</p> <p>13 PLAVIN_000004008-000004011</p> <p>14</p> <p>15 Exhibit 11 E-mails 78</p> <p>16 BERKOWITZ_000000102-000000111</p> <p>17 Exhibit 12 August 1, 2020 e-mail from 82</p> <p>18 keystonecopl@verizon.net to</p> <p>19 Louis Hollander, Jr.</p> <p>20 PLAVIN_000004810-000004823</p> <p>21</p> <p>22 Exhibit 13 E-mails 88</p> <p>23 BERKOWITZ_000000008-000000042</p> <p>24 Exhibit 14 E-mails 95</p> <p>25 BERKOWITZ_000000043</p> <p>26</p> <p>27 Exhibit 15 E-mails 100</p> <p>28 BERKOWITZ_000000050-000000054</p> <p>29 Exhibit 16 E-mails 109</p> <p>30 BERKOWITZ_000000061-000000074</p> <p>31</p> <p>32 Exhibit 17 E-mails 115</p> <p>33 BERKOWITZ_000000114-000000119</p> <p>34 Exhibit 18 E-mails 122</p> <p>35 BERKOWITZ_000000130</p> <p>36</p> <p>37 Exhibit 19 E-mails 125</p> <p>38 BERKOWITZ_000000122-000000123</p> <p>39</p> <p>40 (Index cont'd. on next page)</p>

<p style="text-align: right;">Page 5</p> <p>1 (Index cont'd.)</p> <p>2 Marked for I.D. Page</p> <p>3 Exhibit 20 E-mails, 3 pgs. 133</p> <p>4 Exhibit 21 E-mail chain 136</p> <p>PLAVIN_000005424-000005425</p> <p>5</p> <p>Exhibit 22 E-mails 142</p> <p>BERKOWITZ_000000147</p> <p>7 Exhibit 23 E-mails 147</p> <p>BERKOWITZ_000000148-000000153</p> <p>8</p> <p>Exhibit 24 Plaintiffs' Objections and 154</p> <p>9 Responses to Defendant's Second</p> <p>Set of Interrogatories</p> <p>10 - - -</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 7</p> <p>1 The parties and their counsel consent to</p> <p>2 this arrangement and waive any objections to this</p> <p>3 manner of reporting. Please indicate your agreement</p> <p>4 by stating your name and your agreement on the</p> <p>5 record.</p> <p>6 THE WITNESS: My name is Alan W.</p> <p>7 Berkowitz, and I agree.</p> <p>8 MR. FERRONE: Justin Ferrone from</p> <p>9 Debevoise & Plimpton. I agree as well.</p> <p>10 MR. CARULLO: Nick Carullo from Susman</p> <p>11 Godfrey. I also agree.</p> <p>12 THE COURT REPORTER: Will the witness</p> <p>13 please state and spell your first and last name for</p> <p>14 the record.</p> <p>15 THE WITNESS: Alan, A-L-A-N, W.</p> <p>16 Berkowitz, B-E-R-K-O-W-I-T-Z.</p> <p>17 THE COURT REPORTER: Will the witness</p> <p>18 now please repeat the following declaration for the</p> <p>19 record: "I declare my testimony in this matter is</p> <p>20 under penalty of perjury."</p> <p>21 THE WITNESS: I declare my testimony in</p> <p>22 this matter is under penalty of perjury.</p> <p>23 THE COURT REPORTER: The witness having</p> <p>24 declared that his testimony in this matter is under</p> <p>25 penalty of perjury, and the parties having stated</p>
<p style="text-align: right;">Page 6</p> <p>1 THE VIDEOGRAPHER: We are going on the</p> <p>2 record for the remote video deposition of Alan</p> <p>3 Berkowitz on July 21, 2022, at 10:06 a.m. Eastern</p> <p>4 Time in the matter of Plavin versus GHI.</p> <p>5 My name is Aydaline Garcia, and I'll be</p> <p>6 video recording today's remote deposition on behalf</p> <p>7 of Lexitas.</p> <p>8 Will counsel please introduce themselves</p> <p>9 for the record.</p> <p>10 MR. FERRONE: Justin Ferrone, Debevoise</p> <p>11 & Plimpton, representing defendant Group Health</p> <p>12 Incorporated, and I'm joined by my colleague Jared</p> <p>13 Kagan.</p> <p>14 MR. CARULLO: Nick Carullo from Susman</p> <p>15 Godfrey on behalf of the witness.</p> <p>16 THE VIDEOGRAPHER: Would the court</p> <p>17 reporter please swear in the witness.</p> <p>18 THE COURT REPORTER: The attorneys</p> <p>19 participating in this proceeding acknowledge that I</p> <p>20 am not physically present in the deposition room and</p> <p>21 that I will be reporting this deposition remotely.</p> <p>22 They further acknowledge that, in lieu of an oath</p> <p>23 administered in person, the witness will verbally</p> <p>24 declare his testimony in this matter is under</p> <p>25 penalty of perjury.</p>	<p style="text-align: right;">Page 8</p> <p>1 their agreement on the record, you may proceed.</p> <p>2 MR. FERRONE: Thank you. Thank you,</p> <p>3 Mr. Berkowitz.</p> <p>4 BY MR. FERRONE:</p> <p>5 Q. Thank you, Mr. Berkowitz. Good morning</p> <p>6 to you.</p> <p>7 A. Good morning.</p> <p>8 Q. Thank you for fighting through some</p> <p>9 technical difficulties. I appreciate you making the</p> <p>10 effort and being here today.</p> <p>11 For the record, could you please state</p> <p>12 and spell your name and provide your current</p> <p>13 address.</p> <p>14 A. Alan, A-L-A-N, W. Berkowitz,</p> <p>15 B-E-R-K-O-W-I-T-Z, 7519 South Blue Spring Drive,</p> <p>16 Parkland, Florida, 33067.</p> <p>17 Q. Thank you.</p> <p>18 Have you ever been deposed before,</p> <p>19 Mr. Berkowitz?</p> <p>20 A. Yes.</p> <p>21 Q. In what circumstances?</p> <p>22 A. I am a former New York City police</p> <p>23 detective.</p> <p>24 Q. And you were deposed as a former New York</p> <p>25 City police detective?</p>

<p style="text-align: right;">Page 29</p> <p>1 e-mails?</p> <p>2 MR. CARULLO: Object to the form.</p> <p>3 THE WITNESS: No.</p> <p>4 MR. FERRONE: Ms. Garcia, could you</p> <p>5 please introduce tab 2 and mark it as Exhibit 3.</p> <p>6 (Exhibit 3 marked for identification.)</p> <p>7 THE VIDEOGRAPHER: Do you want control</p> <p>8 of the document, counsel?</p> <p>9 MR. FERRONE: Yeah, that would be</p> <p>10 helpful. Thank you.</p> <p>11 BY MR. FERRONE:</p> <p>12 Q. So, Mr. Berkowitz, I'm going to -- I can</p> <p>13 scroll through this document to make sure you have a</p> <p>14 chance to read it. I can start from the bottom,</p> <p>15 which would be the oldest e-mail in the chain, and I</p> <p>16 can move up or down however quickly you'd like me to</p> <p>17 do that.</p> <p>18 So the bottom is way down here and it</p> <p>19 starts here. And for the record, I will just say</p> <p>20 that this document is a document produced by</p> <p>21 Mr. Berkowitz with the Bates number of</p> <p>22 BERKOWITZ_000000078, and it's Exhibit 3.</p> <p>23 So, Mr. Berkowitz, I'll scroll up to</p> <p>24 where there's text.</p> <p>25 A. Okay. Yeah, I see what you're sending or</p>	<p style="text-align: right;">Page 31</p> <p>1 correct? So if we scroll down, it says "GHI</p> <p>2 Lawsuit."</p> <p>3 Do you recall receiving this message?</p> <p>4 A. I believe that may have been the original</p> <p>5 e-mail that I received from Mr. Cohen.</p> <p>6 Q. And this is dated March -- I'm sorry --</p> <p>7 May 26, 2017; is that correct?</p> <p>8 A. But that's not from Mr. Cohen.</p> <p>9 Q. Right. Well, so this e-mail is from the</p> <p>10 NYPD Shomrim Society to you, correct?</p> <p>11 A. Correct.</p> <p>12 Q. And as we scroll down, it seems to</p> <p>13 include a message from Mr. Cohen.</p> <p>14 A. Correct.</p> <p>15 Q. Okay. So does that refresh your</p> <p>16 recollection as to whether this is the first time</p> <p>17 Mr. Cohen e-mailed you?</p> <p>18 A. No, not at all. I'm receiving an e-mail</p> <p>19 from the Shomrim Society. I can't tell you when</p> <p>20 Mr. -- Mr. Cohen sent something to me five or six</p> <p>21 years ago. I don't remember.</p> <p>22 Q. But since this is from the Shomrim</p> <p>23 Society, it wasn't from Mr. Cohen, right? So this</p> <p>24 wouldn't have been the first time he e-mailed you?</p> <p>25 A. He did not e-mail me this.</p>
<p style="text-align: right;">Page 30</p> <p>1 what you're producing.</p> <p>2 Q. So, Mr. Berkowitz, have you seen this</p> <p>3 document before?</p> <p>4 A. I've seen the document before, yes.</p> <p>5 Q. What is this document?</p> <p>6 A. It's different e-mails from different</p> <p>7 people regarding -- it says "a class action</p> <p>8 lawsuit," and it's basically Steve Cohen, but I</p> <p>9 honestly don't know if there's a class action</p> <p>10 lawsuit.</p> <p>11 Q. Okay. So I'm going to scroll down to</p> <p>12 Mr. Cohen's e-mail here, and I'll show you --</p> <p>13 A. Okay.</p> <p>14 Q. -- this looks like it's from -- this part</p> <p>15 of the e-mail is from NYPD Shomrim Society. Did I</p> <p>16 say that correctly?</p> <p>17 A. Correct.</p> <p>18 Q. What is the NYPD Shomrim Society?</p> <p>19 A. It's an organization of Jewish police</p> <p>20 officers.</p> <p>21 Q. So is that a group that you're affiliated</p> <p>22 with?</p> <p>23 A. I'm affiliated as a member. I never sent</p> <p>24 them that e-mail.</p> <p>25 Q. And the subject here is "GHI Lawsuit,"</p>	<p style="text-align: right;">Page 32</p> <p>1 Q. So looking at this message, Mr. Cohen</p> <p>2 writes "Looking for plaintiffs for a possible class</p> <p>3 action suit against GHI. Specifically, looking</p> <p>4 for," and then he lists criteria.</p> <p>5 One of them is a current GHI policyholder</p> <p>6 living out of state, and second is a current GHI</p> <p>7 policyholder living out of state who has used and --</p> <p>8 which I think he meant "an" -- out-of-network doctor</p> <p>9 or facility since 2015.</p> <p>10 Do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. Do you have any understanding of what he</p> <p>13 meant by that?</p> <p>14 A. No.</p> <p>15 Q. Would you fit that criteria?</p> <p>16 A. No.</p> <p>17 Q. So you were not at that time a current</p> <p>18 GHI policyholder living out of state?</p> <p>19 A. GHI was my secondary. Medicare was my</p> <p>20 primary. Medicare covered my cost. GHI covered the</p> <p>21 20 percent. So if I received something from GHI, I</p> <p>22 threw it away. Did not pertain to me.</p> <p>23 Q. Thank you.</p> <p>24 When did you go on Medicare?</p> <p>25 A. January 1, 1989.</p>

<p style="text-align: right;">Page 121</p> <p>1 BY MR. FERRONE:</p> <p>2 Q. And do you understand that you agree to</p> <p>3 pay a premium and the insurance company agrees to</p> <p>4 provide the contracted-for benefits, right?</p> <p>5 MR. CARULLO: Object to the form.</p> <p>6 THE WITNESS: Correct.</p> <p>7 BY MR. FERRONE:</p> <p>8 Q. And in the case of the GHI Comprehensive</p> <p>9 Benefits Plan, the members didn't personally pay the</p> <p>10 premium; the City paid it on their behalf. Is that</p> <p>11 right?</p> <p>12 A. Correct.</p> <p>13 Q. And the members of the Comprehensive</p> <p>14 Benefits Plan were entitled only to the coverage</p> <p>15 that the City and the unions negotiated; is that</p> <p>16 right?</p> <p>17 A. Correct.</p> <p>18 Q. So members were not entitled to rates</p> <p>19 that are not listed in the policy documents; is that</p> <p>20 right?</p> <p>21 MR. CARULLO: Object to the form.</p> <p>22 THE WITNESS: Yes.</p> <p>23 BY MR. FERRONE:</p> <p>24 Q. And if members wanted different rates to</p> <p>25 be included in the policy documentation, they should</p>	<p style="text-align: right;">Page 123</p> <p>1 Do you see that?</p> <p>2 A. Yes.</p> <p>3 Q. He also adds, "Arnie Fisher was under the</p> <p>4 impression that people who live in New York are not</p> <p>5 eligible to part of the suit. Not true. Most of</p> <p>6 the folks affected live in New York. Last week, I</p> <p>7 just happened to need people who lived outside New</p> <p>8 York to establish federal jurisdiction."</p> <p>9 Do you see all that?</p> <p>10 A. Yes.</p> <p>11 Q. So I think we might have talked about</p> <p>12 this before but just refresh my recollection. Who</p> <p>13 is Arnie Fisher?</p> <p>14 A. A retired captain that I know.</p> <p>15 Q. Okay. And do you have any -- did you</p> <p>16 discuss with Arnie Fisher the criteria for people</p> <p>17 who can participate in the lawsuit?</p> <p>18 A. No.</p> <p>19 Q. Okay. Did you discuss with Steve Cohen</p> <p>20 the criteria for people who could participate in the</p> <p>21 lawsuit?</p> <p>22 A. No.</p> <p>23 Q. Okay. Do you have any understanding</p> <p>24 about why Mr. Cohen was looking for people who lived</p> <p>25 outside of New York to establish federal</p>
<p style="text-align: right;">Page 122</p> <p>1 have told their unions to negotiate for higher</p> <p>2 rates; is that right?</p> <p>3 MR. CARULLO: Object to the form.</p> <p>4 THE WITNESS: Yes.</p> <p>5 MR. FERRONE: I think we can put that</p> <p>6 document away. And let's go to tab 18, please,</p> <p>7 which I think will also be Exhibit 18.</p> <p>8 (Exhibit 18 marked for identification.)</p> <p>9 BY MR. FERRONE:</p> <p>10 Q. Exhibit 18 is a document that you</p> <p>11 produced in this case, Mr. Berkowitz, with the Bates</p> <p>12 number 0000000130, and it's an e-mail from</p> <p>13 berkyl4@aol.com to -- strike that. Sorry.</p> <p>14 Going down is an e-mail from Alan Mail to</p> <p>15 Steve Cohen on Sunday, May 28, 2017, at 9:26 a.m.</p> <p>16 A. Yes.</p> <p>17 Q. Do you see that?</p> <p>18 So the top e-mail is from you to</p> <p>19 Mr. Cohen, but the bottom e-mail, excuse me, is also</p> <p>20 dated May 28. It's from Mr. Cohen. It appears to</p> <p>21 be to you.</p> <p>22 And Mr. Cohen writes, "Alan, Apparently</p> <p>23 there is a typo in the e-mail you sent out about the</p> <p>24 GHI class action; my correct e-mail address is," and</p> <p>25 he goes on to list his address.</p>	<p style="text-align: right;">Page 124</p> <p>1 jurisdiction?</p> <p>2 A. No.</p> <p>3 Q. Did you ever discuss that with him?</p> <p>4 A. No.</p> <p>5 Q. The last sentence of Mr. Cohen's e-mail</p> <p>6 says, "So if I could impose upon you once more to</p> <p>7 resend the e-mail out to Shomrim members with the</p> <p>8 correct e-mail; and making clear it is not limited</p> <p>9 to out-of-state folks."</p> <p>10 Do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. And then you respond above that "Done to</p> <p>13 my e-mail list only not to Shomrim. I have no</p> <p>14 access to theirs."</p> <p>15 Do you see that?</p> <p>16 A. Correct.</p> <p>17 Q. So why don't you have access to Shomrim's</p> <p>18 e-mail address or account -- e-mail list?</p> <p>19 MR. CARULLO: Object to the form.</p> <p>20 THE WITNESS: That's their private</p> <p>21 e-mail list. I have nothing to do with Shomrim. I</p> <p>22 don't even e-mail Shomrim.</p> <p>23 BY MR. FERRONE:</p> <p>24 Q. Okay. Do you have any understanding as</p> <p>25 to why Mr. Cohen thought that you did?</p>

<p style="text-align: right;">Page 133</p> <p>1 Q. So do you have any understanding as to</p> <p>2 why you were on these e-mails?</p> <p>3 A. No.</p> <p>4 MR. FERRONE: Let's move on to tab 20,</p> <p>5 which will be Exhibit 20.</p> <p>6 (Exhibit 20 marked for identification.)</p> <p>7 MR. FERRONE: And for the record, this</p> <p>8 is a document that has been reproduced in this case</p> <p>9 with a Bates number ending in I think it was 137.</p> <p>10 This is tab 20? Yes. It originally had some</p> <p>11 redactions but it has since been unredacted.</p> <p>12 BY MR. FERRONE:</p> <p>13 Q. So the e-mail we are looking at here,</p> <p>14 Mr. Berkowitz, is from Mr. Berkowitz to Steve Cohen</p> <p>15 dated October 17, 2019, at 6:31 p.m., and the</p> <p>16 subject is "New lawsuit against GHI - Failure to</p> <p>17 Approve a Procedure (1 Attachment)."</p> <p>18 Do you see that?</p> <p>19 A. Yes.</p> <p>20 Q. I'm going to scroll down to the sort of</p> <p>21 second message in the chain here on the same page</p> <p>22 dated October 17 at 6:17 p.m.</p> <p>23 A. Okay.</p> <p>24 Q. Mr. Cohen writes to you, "Alan, Thanks</p> <p>25 for forwarding this. We are exploring the</p>	<p style="text-align: right;">Page 135</p> <p>1 class action lawsuits with him?</p> <p>2 A. No. I don't even know what lawsuits</p> <p>3 we're talking about here. He said one, now two. So</p> <p>4 I'm honest -- I don't know which one we're</p> <p>5 discussing, so the answer is no.</p> <p>6 Q. So about 14 minutes later, you respond to</p> <p>7 his e-mail and wrote "Steve, I thought you forgot</p> <p>8 me," exclamation point.</p> <p>9 Do you see that?</p> <p>10 A. Yes.</p> <p>11 Q. What did you mean by that?</p> <p>12 A. A joke. "Thought you forgot me."</p> <p>13 Q. What was the joke?</p> <p>14 A. Exactly what I said. "I thought you</p> <p>15 forgot me."</p> <p>16 Q. Why did you think that?</p> <p>17 A. Don't remember.</p> <p>18 Q. So we've been looking at various e-mails</p> <p>19 between you and Mr. Cohen dating back to 2017 where</p> <p>20 you were forwarding on e-mails on his behalf into</p> <p>21 2019 and 2018 and 2020.</p> <p>22 How would Mr. Cohen have forgotten you?</p> <p>23 A. That's why I said it was a joke. I don't</p> <p>24 know.</p> <p>25 Q. Did Mr. Cohen respond to you?</p>
<p style="text-align: right;">Page 134</p> <p>1 possibility of on or two class action lawsuits." I</p> <p>2 think he meant "one."</p> <p>3 A. That's why I'm confused, but okay.</p> <p>4 Q. So I think it's "one or two class action</p> <p>5 lawsuits - in addition to what we are doing on</p> <p>6 behalf of the individual client - and I will let you</p> <p>7 know soon."</p> <p>8 Do you see that?</p> <p>9 A. Yes.</p> <p>10 Q. Do you have any understanding as to what</p> <p>11 Mr. Cohen means by "what we are doing on behalf of</p> <p>12 the individual client"?</p> <p>13 A. No.</p> <p>14 Q. Why didn't you ask?</p> <p>15 A. It wasn't my business to ask about</p> <p>16 anyone's personal information with an attorney.</p> <p>17 Q. Okay. Well, Mr. Cohen was telling you</p> <p>18 about it, and you weren't the least bit curious?</p> <p>19 A. No.</p> <p>20 Q. He also tells you that "We are exploring</p> <p>21 the possibility of one or two class action</p> <p>22 lawsuits."</p> <p>23 Do you see that?</p> <p>24 A. Yes.</p> <p>25 Q. Did you ever discuss those one or two</p>	<p style="text-align: right;">Page 136</p> <p>1 A. You'd have to look at the e-mails above</p> <p>2 it. I don't --</p> <p>3 Q. There's nothing in this e-mail chain.</p> <p>4 Did he separately respond to you that you recall?</p> <p>5 A. No. Not that I recall, no.</p> <p>6 Q. Do you recall having any follow-up</p> <p>7 conversations with him about the one or two class</p> <p>8 action lawsuits?</p> <p>9 A. Not at all.</p> <p>10 Q. Okay. So Mr. Cohen promised to let you</p> <p>11 know soon but he didn't do that?</p> <p>12 A. Correct.</p> <p>13 Q. Okay. And you never followed up to ask</p> <p>14 what the status was?</p> <p>15 A. No. I'm not involved. I was not a</p> <p>16 litigant. I wasn't honestly concerned about</p> <p>17 anything.</p> <p>18 MR. FERRONE: Okay. Let's go on to</p> <p>19 tab 21, please. This will be marked Exhibit 21.</p> <p>20 (Exhibit 21 marked for identification.)</p> <p>21 MR. FERRONE: It's Bates number</p> <p>22 PLAVIN_0000005424, and the top e-mail in the chain</p> <p>23 is from berk4@aol.com to Steve Cohen, and it's</p> <p>24 dated June 5, 2017.</p> <p>25 BY MR. FERRONE:</p>

Page 141

1 Q. So Mr. Cohen thanks you for forwarding
2 this on --
3 **A. Right.**
4 Q. -- and that he needs to see the actual
5 EOBs.
6 Do you know what that means?
7 **A. I guess that's the explanation of**
8 **benefits.**
9 Q. Did you ever collect any explanations of
10 benefits from anyone?
11 **A. No.**
12 Q. Did you ever send Mr. Cohen any
13 explanations of benefits?
14 **A. No.**
15 Q. You respond, as you mentioned when we
16 first put this document on the screen, by saying, "I
17 only forwarded you the e-mail he sent me. I'll copy
18 him on your request."
19 Do you see that?
20 **A. Yes.**
21 Q. Do you know if you did that?
22 **A. No.**
23 Q. No, you don't know or, no, you didn't do
24 it?
25 **A. No, I don't remember if I did it.**

Page 142

1 MR. FERRONE: Let's move on to the next
2 document.
3 You know what? Let's take a short
4 five-minute break. I think we might be getting to
5 the end.
6 **THE WITNESS: Thank you.**
7 THE VIDEOGRAPHER: The time is 1:18. We
8 are going off the record.
9 (Brief recess.)
10 THE VIDEOGRAPHER: The time is 1:25, and
11 we are back on the record.
12 MR. FERRONE: Thank you. Will you
13 please put up tab 30 and mark it as Exhibit 22.
14 (Exhibit 22 marked for identification.)
15 MR. FERRONE: And for the record,
16 Exhibit 22 is a document produced in this case by
17 Mr. Berkowitz with the Bates number 0000000147, and
18 it's an e-mail from Mr. Berkowitz to Steve Cohen
19 dated October 25, 2021, at 9:40 p.m. And the
20 subject is "Introduction."
21 BY MR. FERRONE:
22 Q. Do you see the document on your screen,
23 Mr. Berkowitz?
24 **A. Yes.**
25 Q. Mr. Berkowitz, do you recognize this

Page 143

1 document?
2 **A. Yes.**
3 Q. What do you recognize about it?
4 **A. I wrote it.**
5 Q. Do you recall why you wrote it?
6 **A. I believe Mr. Cohen was asking me if I**
7 **was involved in issues with other retirees.**
8 Q. When you say "Mr. Cohen was asking me if
9 I was involved in issues with other retirees," what
10 do you mean?
11 **A. Let me clarify that. Not issues. What**
12 **was my background that I spoke with retirees as**
13 **president of the Broward 10-13 Club, and this is**
14 **exactly why. I was --**
15 Q. For what reason --
16 **A. What?**
17 Q. I'm sorry. Please finish your answer. I
18 didn't mean to -- I thought you were finished.
19 **A. No, no, no. It's just that being**
20 **president of the club, I'd stand in front of the**
21 **audience at the time I was president, give them**
22 **information that pertained to retirees, and I was**
23 **involved in a lot of ongoing things. I was a -- you**
24 **know? That was it, you know. I told them who I**
25 **was.**

Page 144

1 Q. So this e-mail is dated September -- I'm
2 sorry -- October of 2021.
3 Do you see that?
4 **A. Yes.**
5 Q. And we looked at e-mails between you and
6 Mr. Cohen dating back to 2015, I think.
7 **A. Yes.**
8 Q. Does that sound right?
9 **A. Yeah.**
10 Q. So in the five or six years, had you
11 never had a discussion with Mr. Cohen about your
12 background?
13 **A. Not that I remember, no.**
14 Q. So you testified a little while ago that
15 Mr. Cohen was "asking me if I was involved in issues
16 with other retirees."
17 **A. Not issues. I clarified it by saying**
18 **why -- what did I do, and I said I was president of**
19 **the club, and I brought topics that were affecting**
20 **retired, because we had no active in the club,**
21 **retired -- police retirees, with the City of New**
22 **York, health benefits, COLA increases, things like**
23 **that.**
24 Q. Were there retired but
25 non-Medicare-eligible retirees in the club?

<p style="text-align: right;">Page 145</p> <p>1 A. No. There was both.</p> <p>2 Q. There was both. Okay.</p> <p>3 So for what purpose was Mr. Cohen asking</p> <p>4 about this in October of 2021?</p> <p>5 A. You'd have to ask Mr. Cohen.</p> <p>6 Q. So you spoke with Mr. Cohen on the phone;</p> <p>7 is that correct?</p> <p>8 A. I spoke to Mr. Cohen once. I cannot tell</p> <p>9 you when that was.</p> <p>10 Q. This e-mail says, "Steve, Thanks for</p> <p>11 calling me back."</p> <p>12 So this is at least the second e-mail, if</p> <p>13 not more, that we've seen references the calls</p> <p>14 between you and Mr. Cohen; is that right?</p> <p>15 A. No. I only spoke to Mr. Cohen once. I</p> <p>16 might have called his office or left a message.</p> <p>17 This is -- this is the only time I remember speaking</p> <p>18 to him.</p> <p>19 Q. Okay. So how did Mr. Cohen convey his</p> <p>20 request for you to provide information on your</p> <p>21 background?</p> <p>22 A. Don't remember.</p> <p>23 Q. Would it have been by phone?</p> <p>24 A. I -- I'm going to be honest and tell you</p> <p>25 I just don't remember.</p>	<p style="text-align: right;">Page 147</p> <p>1 A. No.</p> <p>2 Q. Did Mr. Cohen ask you to talk to the</p> <p>3 people in the Broward 10-13 Club about anything?</p> <p>4 A. No.</p> <p>5 Q. So he just wanted to learn about your</p> <p>6 background and your ability to talk to members but</p> <p>7 never asked you to convey any information to them?</p> <p>8 A. All the information I gave was the</p> <p>9 information that Mr. Cohen sent via e-mail.</p> <p>10 MR. FERRONE: Let's move on to tab 31,</p> <p>11 which is Exhibit 23.</p> <p>12 (Exhibit 23 marked for identification.)</p> <p>13 MR. FERRONE: And this is an e-mail, for</p> <p>14 the record, from Steve Cohen to Alan Berkowitz on</p> <p>15 October 28, 2021, and it's Bates stamped</p> <p>16 BERKOWITZ_0000000148.</p> <p>17 BY MR. FERRONE:</p> <p>18 Q. Mr. Berkowitz, have you seen this e-mail</p> <p>19 before?</p> <p>20 A. Yes.</p> <p>21 Q. When did you see this e-mail?</p> <p>22 A. I believe I forwarded this e-mail to</p> <p>23 Mr. -- Mr. Cohen.</p> <p>24 Q. Well, I think -- you can take a look at</p> <p>25 it -- the top e-mail in the chain is from Mr. Cohen</p>
<p style="text-align: right;">Page 146</p> <p>1 Q. So however it was that Mr. Cohen conveyed</p> <p>2 the request for you to provide this information</p> <p>3 about yourself --</p> <p>4 A. Yes.</p> <p>5 Q. -- when he did that, did he tell you what</p> <p>6 he needed that information for?</p> <p>7 A. No.</p> <p>8 Q. Did you ask?</p> <p>9 A. No.</p> <p>10 Q. After you gave him this information, what</p> <p>11 did Mr. Cohen do with it?</p> <p>12 A. I have no clue what Mr. Cohen did.</p> <p>13 Q. So for the prior six years, you had been</p> <p>14 forwarding on e-mails to your groups at Mr. Cohen's</p> <p>15 request, correct?</p> <p>16 A. Correct.</p> <p>17 Q. And you'd been sending Mr. Cohen proof of</p> <p>18 the fact that you forwarded these on at his request,</p> <p>19 correct?</p> <p>20 A. I have forwarded him one or two to show</p> <p>21 him that his request was published in somebody's</p> <p>22 newsletter or so, yes.</p> <p>23 Q. So did Mr. Cohen ever ask you to talk to</p> <p>24 the people in the Broward 10-13 Club about the GHI</p> <p>25 lawsuit?</p>	<p style="text-align: right;">Page 148</p> <p>1 to you, but there is an e-mail below where it</p> <p>2 appears on October 27, 2021, that you are writing to</p> <p>3 Mr. Cohen.</p> <p>4 Do you see that?</p> <p>5 A. Yes.</p> <p>6 Q. And you write to him, "As of 10/27/21</p> <p>7 4:37 p.m., the Laws database is current through 2021</p> <p>8 Chapters 1-516 New York City Administrative Code."</p> <p>9 Do you see that?</p> <p>10 A. Yes.</p> <p>11 Q. So, Mr. Berkowitz, what's the context of</p> <p>12 this e-mail?</p> <p>13 A. I believe Mr. Cohen was asking me where</p> <p>14 is it written that the City of New York is required</p> <p>15 to pay for health coverage for retirees and active</p> <p>16 members.</p> <p>17 Q. So why was Mr. Cohen asking you that?</p> <p>18 A. I can't answer that. I don't know why he</p> <p>19 asked me.</p> <p>20 Q. Okay. Let me try it a different way.</p> <p>21 The last document we looked at was a date</p> <p>22 where Mr. Cohen -- sorry -- where you provided</p> <p>23 Mr. Cohen with information on your background was</p> <p>24 dated on Monday, October 25, 2021.</p> <p>25 Three days later you're sending him a</p>